

Lawyer Representatives in the Ninth Circuit Activities and Accomplishments 2006-2007

I. The Ninth Circuit's Lawyer Representatives

Lawyer Representatives, chosen to represent attorneys practicing in each of the Ninth Circuit's fifteen districts in nine western states and two Pacific Island jurisdictions, play an important role in the administration of justice in the Ninth Circuit. Currently, 143 Lawyer Representatives work to foster open communications between judges and attorneys, and provide support and advice in the functioning of the courts. Through the years, attorney support and contributions to the administration of justice in the Ninth Circuit have been invaluable and have resulted in positive changes that have improved the functioning of the courts.

II. The Lawyer Representatives Coordinating Committee ("LRCC")

The LRCC acts as a separate committee and is composed of the chairperson or co-chairs of each delegation of Lawyer Representatives from each of the fifteen districts. The LRCC acts as a liaison for the Lawyer Representatives to the Ninth Circuit Judicial Council's Conference Executive Committee.

Pursuant to Judicial Council Order, LRCC members are required to engage in periodic communication with the Conference of Chief District Judges to "plan and accomplish such activities within the districts as shall be requested by the Executive Committee or as shall be necessary and proper to accomplish the purpose of the conference." *See* Council Order adopted December 12, 1978, as amended through 1994, paragraph 4.

The LRCC has three officers: Vice-Chair, Chair-Elect, and Chair. During the past year, Chris Latham has served as Vice-Chair, Joe Meier has served as Chair-Elect, and Andy Gordon has served as Chair. The three officers also serve as members of the Conference Executive Committee, where they take an active role in planning the Ninth Circuit conference on behalf of the Lawyer Representatives.

Members of the LRCC plan two education programs for annual meetings with the Conference of Chief Bankruptcy Judges and the Conference of Chief District Judges. In addition, during the past year, the LRCC also formed a subcommittee to prepare a resolution to present at the Ninth Circuit Conference.

A. Conference of Chief Bankruptcy Judges/LRCC Meeting

In November 2006, the L.R.C.C. participated in a ½ day meeting with the Chief Bankruptcy Judges of the 9th Circuit in Scottsdale, AZ. As in 2005, the LRCC split the ½ day program into a presentation concerning consumer cases and into a second presentation concerning business cases that come before the bankruptcy courts.

The LRCC worked closely with Chief Bankruptcy Judge Ralph Kirscher (MT), the program chairman, to present timely issues that were of interest not only to the bankruptcy judges but also to the attorneys prior to the presentation. The two topics presented were titled “Unbundles of Joy” and “Changing Roles in Commercial Cases: The Impact of Hedge Funds on the Restructuring Landscape”.

The Unbundles of Joy program addressed consumer case issues that the bankruptcy courts are facing in the Circuit. It focused on how consumer debtor lawyers are restricting their practice in response to the legislative changes made to the bankruptcy code in the fall of 2005. Prior to the program, the LRCC circulated a survey to all of the Bankruptcy Judges in the 9th Circuit. That survey asked for the Bankruptcy Judges to respond to a series of questions including: how they perceive the way a consumer debtor’s attorney can limit his or her representation of the debtor in the bankruptcy case; whether certain limitations are ethical; and whether those same limitations are acceptable to the bankruptcy judge. These questions also included whether the bankruptcy judges believed an attorney could by contract only handle certain specified matters in a chapter 7 or chapter 13 case but exclude representation in other matters in the case. The results were compiled and presented at the meeting by Ninth Circuit lawyer representatives Todd Tracy (WAW), Andy Patten (MT) and Renee Warren (WAW).

The speakers at the business topic focused first on who are hedge fund lenders, how they operate and their policies. Second, the presentation addressed what is occurring in pre bankruptcy negotiations with these creditors over loan terms, etcetera. Third, the speakers discussed the participation of these creditors in a bankruptcy case, including their views in issues such as Debtor-in-Possession lending and exit financing. The LRCC invited four speakers Peter Gilhuly; Steve Strong; Paul Ahrenson and James Spragregen to present the program. Lawyer representatives Robbin Itkin (CAC) and Candace Carlyon (NV) arranged for the speakers and introduced the topic at the meeting.

Numerous additional lawyer representatives from throughout the Circuit participated in the conference calls and the preparation of the program materials for the meeting.

B. Conference of Chief District Judges/LRCC Meeting

The LRCC presented two programs at the Chief District Judges Conference in San Diego on March 1, 2007. The LRCC worked closely with Chief Judge Lynn Winmill (ID), the presiding Chief District Judge for the conference, to develop programs of interest to the chief district judges from throughout the Ninth Circuit.

The first panel was entitled “Managing Peers,” and focused on issues faced by chief district judges as first-among-equals charged with administrative responsibility for managing and motivating their fellow judges. Amy E. Randel, Ph.D. (Assistant Professor at San Diego State University) served as the moderator. Panelists were Judge Marvin Aspen (ILN), Judge Dee Benson (UT), and Kevin Cole (Dean of the University of San Diego School of Law). The discussion ranged from recognizing and addressing problems created by judges who become mentally challenged in their advanced years, to planning

for succession from one chief judge to the next, to the essential need for diplomacy and tact in managing peers. LRCC Vice Chair Christopher Latham, Kevin Bonner (AZ), Candace Carlyon (NV), Teri O'Toole (HI) and Advisory Board Liaison Merrilee MacLean were instrumental in putting this program together.

The second panel was entitled "Drug Courts" and featured the District of Oregon's creation of a post-sentence Drug Court. Bill Hyslop (WAE) served as moderator of the panel, which was comprised of Judge Ann Aiken (OR), Mark Walker (Senior United States Probation Officer from Oregon), and Karin Immergut (United States Attorney from Oregon). The panelists explained how the Oregon Drug Court operates and is funded, and discussed the success rates being achieved. Several questions from the audience focused on how a Drug Court could be tailored to the needs of different districts. Andy Gordon (LRCC Chair), Wendy Holton (MT), Bill Hyslop (WAE), and Ed Swanson assisted in putting this program together.

C. Resolution Subcommittee

Resolutions may present the greatest opportunity for Lawyer Representatives to influence the process and procedures of the courts of the Ninth Circuit and the administration of justice. Resolutions have a very significant potential for affecting change at all levels within the Ninth Circuit, by either changing an existing law, rule or policy, or by adding a new one.

Traditionally, the LRCC gathers resolutions to be presented and voted on at the Ninth Circuit Conference. The resolutions must be approved by the Conference Executive Committee before being presented at the annual conference. Resolutions provide the Ninth Circuit with a mechanism to change policies and procedures, and to initiate ideas that may result in improvements in the administration of justice. At the conference, lawyers and judges vote separately on the resolutions. If a majority of judges and a majority of lawyers approve the resolution, then the resolution passes and is forwarded to the Judicial Council for implementation.

This year the LRCC formed a resolution subcommittee comprised of Kelli Sager (CAC), Deb Kristensen (ID), Gary Grimmer (HI), and Bill Hyslop (WAE). The subcommittee drafted a resolution calling for a change in the policy of the Judicial Conference of the United States to permit the broadcasting and other media coverage of civil, non-jury trials in the District Courts.

D. Immigration Subcommittee

On May 5, 2006, the LRCC hosted a very successful Circuit-wide "Immigration Brainstorming Session" at the Ninth Circuit Court of Appeals in San Francisco. The idea for the meeting was developed by former LRCC Chair Peg Carew Toledo, who had been trying to find ways that the LRCC could assist the Ninth Circuit in dealing with the backlog of immigration appeals. The LRCC formed a subcommittee to look into the issue. That subcommittee has now morphed into a circuit-wide committee that presently

is seeking financial contributions to fund a mentor program for immigration appeals lawyers in the circuit.

E. Other Activities

1. Welcoming Lunch for New Lawyer Representatives

LRCC members have organized a special welcome lunch for new Lawyer Representatives to give them a better understanding of their role and how the conference functions. This year Joe Meier (Chair), Bill Hyslop (WAE), Gary Grimmer (HI), Judy Ramseyer (WAW), Kevin Bonner (AZ), and Terry O'Toole (HI) organized the welcome program.

2. Planning the Annual Ninth Circuit Judicial Conference

On September 8, 2006, the LRCC participated in the first planning meeting with the Conference Executive Committee for the 2007 Ninth Circuit conference. The LRCC attends the initial meeting of the Conference Executive Committee to provide input and participate in a brainstorming session to develop topics and discuss options for speakers.

The Conference Executive Committee is comprised of the Chief Judge of the Ninth Circuit, three active Ninth Circuit judges, three active district judges, one bankruptcy judge, one magistrate judge, and nine lawyers (the three LRCC officers plus six at-large members). The following lawyers served on the Conference Executive Committee in 2006/2007: Andy Gordon (LRCC Chair), Joe Meier (LRCC Chair-Elect), Chris Latham (LRCC Vice-Chair), Maria Acker (CAS), Carl Oreskovich (WAE), Kelli Sager (CACD), Laura Taylor (CASD), Robert Torres (NMI), Wendy Holtun (MT), and Steve Cochran (as liaison from the Advisory Board).

3. Ninth Circuit Rules Committee

A member of the LRCC is an ex-officio member of the Ninth Circuit Rules Committee. This past year Wendy Holton has served as the LRCC's liaison to the Ninth Circuit Rules Committee.

4. Ninth Circuit Advisory Board

The LRCC Chair is the liaison to the Ninth Circuit Advisory Board. This past year Andy Gordon served as the LRCC's liaison to the Advisory Board. Merrilee MacLean served as the Advisory Board's liaison to the LRCC.

5. Meeting with the Executive Board of the Magistrate Judges

At the annual business meeting in Huntington Beach, CA, the LRCC announced that it had been contacted by the Executive Board of the Magistrate Judges of the Ninth Circuit. That Board asked the LRCC to participate with it in a more substantial way than had been the experience in the past. A determination was made that the Chair-elect of the LRCC

should be the liaison with that group in 2006 in 2007. In October 2006 and again in May of 2007 Joe Meier, the Chair-elect of the LRCC met with the Executive Board of the Magistrate Judges of the Ninth Circuit. After the October meeting the LRCC determined, after consulting with Chief Magistrate Judge Battaglia (CAS), that a survey of all the lawyer representatives in the Ninth Circuit was in order.

A subcommittee was formed that prepared the questions contained in the survey. The survey addressed the reasons a party or an attorney may select a Magistrate Judge to act as the trial judge on Civil Matters. Since many lawyer representatives do not regularly appear before a Magistrate Judge, lawyer representatives, who received the survey, were requested to either fill it in or find another attorney, who regularly appeared in civil matters in the U.S. District Courts, to respond. The identification of the persons who responded were kept confidential so that the names of the responders were neither provided to the LRCC nor the Executive Board of the Magistrate Judges.

Over 50% of the lawyer representatives responded and the results were presented to the Executive Board in May 2007. These results have been reproduced for the lawyer representatives and will be available at the business meeting of the LRCC in 2007.

The subcommittee also prepared a report on the local procedures followed by each district in the 9th Circuit regarding the consent to the use of a Magistrate Judge. This report will also be made available at the business meeting.

The subcommittee of the LRCC, which worked on preparing the survey and the district wide report consisted of the following attorneys: Judy Ramseyer (WAW); Elana Baca (CAC); Kevin Bonner (AZ); Kelly Zusman(OR); Jay Spillane (CAC); and Robin Lewis (CAC).

6. Jury Trial Improvement Committee

The LRCC heard two presentations from former LRCC Chair Brian Rekofke, who served as a lawyer member of the Ninth Circuit's Jury Trial Improvement Committee. Mr. Rekofke, on behalf of that Committee, asked the LRCC to assist in implementation of the Committee's recommendations in each of the lawyers' respective jurisdictions. LRCC members were urged to meet with the lawyer representatives in their districts to explore ways to work with the courts on these issues.